

IN THE UNITED STATES BANKRUPTCY COURT FOR  
THE WESTERN DISTRICT OF OKLAHOMA

IN RE:           Emily R. Madden       )  
                  Jerrod W. Madden     )  
  )       Case No. 19-14172  
  Chapter 7

DEBTORS .

MOTION FOR RELIEF FROM AUTOMATIC STAY AND NOTICE OF  
INTENT TO SEEK ABANDONMENT OF PROPERTY,  
WAIVER OF RULE 4001 (A) (3)  
BRIEF IN SUPPORT THEREOF  
AND NOTICE OF OPPORTUNITY FOR HEARING

COMES NOW, Capital One Auto Finance, a division of Capital One, N.A.  
, a creditor in the above-styled bankruptcy proceeding, and moves  
the Court for an order modifying stay and abandoning property . In  
support of its motion, Movant  
shows the Court as follows:

1.   Movant is a secured creditor of the Debtor.
2.   Movant is the owner and holder of a certain Promissory  
Note and Security Agreement executed by the Debtor covering the  
following described personal property, to-wit:

2015 Nissan Altima Sedan 4D S I4

1N4AL3AP0FN303404

Movant' s security interest in the Property has been properly perfected as shown by the documents, attached hereto, marked collectively as Exhibit "A" and made a part hereof .

3 . As of petition date the total amount due on the Promissory Note and Security Agreement is \$11,278.13, plus accrued interest and interest accruing thereafter until paid in full, plus attorneys fees and costs.

4. The reasonable value of the Property is less than the debt owed against it.

5 . The Debtor has not provided Movant with adequate protection .

6.The Debtor is in default under the terms of his contracts with Movant.

7.The Property is burdensome to the estate, and the automatic stay should be lifted in order that Movant may proceed to foreclose its interest In the Property.

8 . Movant will suffer irreparable injury, loss and damage unless the automatic stay is lifted so as to permit Movant to commence with its action to recover said property. The irreparable injury will be a greater accrual of interest on the unpaid

principal balance and a potential deterioration of the property without the ability of lender to conduct property preservation efforts. Movant requests that the court waive the provisions of Rule 4001 (a) (3) which provides for a stay of fourteen (14) days following the entry of an order granting a motion for relief from stay . The basis for the waiver of the 14 day stay is that the lender will suffer irreparable injury, a greater accrual of interest on the unpaid principal balance and a potential deterioration of the property without the ability of the lender to conduct property preservation efforts.

#### NOTICE OF OPPORTUNITY FOR HEARING

Your rights may be affected. You should read this document carefully and consult your attorney about your rights and the effect of this document . If you do not want the Court to grant the requested relief, or you wish to have your views considered, you must file a written response or objection to the requested relief with the Clerk of the United States Bankruptcy Court for the Western District of Oklahoma, 215 Dean A. McGee Ave. , Oklahoma City, OK 73102 no later than 14 days from the date of filing of this request for relief. You should also mail a file-stamped copy of your response or objection to the undersigned movant/movant s attorney [and others who are required to be served] and file a certificate of service with the Court. If no response or objection is timely filed, the Court may grant the requested relief without a hearing or further notice. The 14 day period includes the 3 days allowed for mailing provided for in Rule 9006 (f) Fed. R. Banker . Proc .

WHEREAS, Capital One Auto Finance, a division of Capital One, N.A. moves the Court for an order modifying the automatic stay as to the Debtor and the above described Property, order the abandonment of the Property from the bankruptcy estate, order that the stay of this order provided in Bankruptcy Rule 4001 (a) (3) shall not apply, and grant such additional relief as this Court deems equitable.

Capital One Auto Finance, a division of  
Capital One, N.A.

BY: s/ Bret D. Davis

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BRET D. DAVIS #15079  
LAMUN MOCK CUNNYNGHAM & DAVIS, P.C.  
5613 N Classen Boulevard  
Oklahoma City, Oklahoma 73118-1295  
(405) 840-5900

Attorney for Movant

bdavis@Lamunmock.com

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of March, 2020, a

true and correct copy Of the Motion for Relief and Abandonment of Property was

electronically served using the CM/ECF system, namely:

Marty D. Martin  
6440 Avondale Drive Suite 200  
Oklahoma City, OK 73116

Lyle R. Nelson  
Two Leadership Square  
211 N. Robinson, Ste 1300  
Oklahoma City, OK 73102

Further I certify that on the 3rd day of March, 2020,

Copies of the Motion to Lift Stay and Abandonment of property were forwarded via U.S. Mail, first class, postage prepaid and properly addressed to the following at the addresses shown below and all parties listed on matrix attached hereto:

Jerrold W. Madden & Emily R. Madden  
1723 Anthony Ave Purcell, OK 73080

—s/.Bret D. Davis

Donor Number \_\_\_\_\_ Contract Number \_\_\_\_\_

You, the Buyer (and Co-Buyer, if any), may buy the vehicle below for cash or on credit. By signing this contract, you choose to buy the vehicle on credit under the agreements on the front and back of this contract. You agree to pay the Seller + Creditor (sometimes "we" or "us" in this contract) the Amount Financed and Finance Charge in U.S. funds according to the payment schedule below. We will figure your finance charge on a daily basis. The Truth-in-Lending Disclosures below are part of this contract.

FEDERAL TRUTH-IN-LENDING DISCLOSURES				
ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate.	FINANCE CHARGE The dollar amount the credit will cost you	Amount Financed The amount of credit provided to you or on your behalf	Total of Payments The amount you will have to pay if you have made all payments as scheduled.	Total Sale Price The total cost of your purchase on credit, including your down payment.
21.00 %	\$ 11299.36	\$ 14468.00	\$ 25767.36	\$ 25267.36

Additional information: See this contract for more information including information about nonpayment, default, any required repayment in full before the scheduled date and security interest.

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## OTHER IMPORTANT AGREEMENTS

## 1. FINANCE CHARGE AND PAYMENTS

- a. How we will figure Finance Charge. We will figure the Finance Charge on a daily basis at the Annual Percentage Rate on the unpaid part of the Amount Financed.
- b. How we will apply payments. We may apply each payment to the earned and unpaid part of the Finance Charge, to the unpaid part of the Amount Financed and to other amounts you owe under this contract in any order we choose.
- c. How late payments or early payments change what you must pay. We based the Finance Charge, Total of Payments, and Total Sale Price shown on the front on the assumption that you will make every payment on the day it is due. Your Finance Charge, Total of Payments, and Total Sale Price will be more if you pay late and less if you pay early. Changes may take the form of a larger or smaller final payment or, at our option, more or fewer payments of the same amount as your scheduled payment with a smaller final payment. We will send you a notice telling you about these changes before the final scheduled payment is due.
- d. You may prepay. You may prepay all or part of the unpaid part of the Amount Financed at any time without penalty. If you do so, you must pay the earned and unpaid part of the Finance Charge and all other amounts due up to the date of your payment.
- e. Your right to refinance a balloon payment. A balloon payment is a scheduled payment that is more than twice as large as the average of your earlier scheduled payments. If you are buying the vehicle primarily for personal, family or household use, you have the right to refinance the balloon payment when due without penalty. The terms of the refinancing will be no less favorable to you than the terms of this contract. This provision does not apply if we adjusted your payment schedule to your seasonal or irregular income.

## 2. YOUR OTHER PROMISES TO US

- a. If the vehicle is damaged, destroyed, or missing. You agree to pay us all you owe under this contract even if the vehicle is damaged, destroyed, or missing.
- b. Using the vehicle. You agree not to remove the vehicle from the U.S. or Canada, or to sell, rent, lease, or transfer any interest in the vehicle or this contract without our written permission. You agree not to expose the vehicle to misuse, seizure, confiscation, or involuntary transfer. If we pay any repair bills, storage bills, taxes, fines, or charges on the vehicle, you agree to repay the amount when we ask for it.
- c. Security Interest. You give us a security interest in:
  - The vehicle and all parts or goods put on it;
  - All money or goods received (proceeds) for the vehicle;
  - All insurance, maintenance, service, or other contracts we finance for you; and
  - All proceeds from insurance, maintenance, service, or other contracts we finance for you. This includes any refunds of premiums or charges from the contracts.
 This secures payment of all you owe on this contract. It also secures your other agreements in this contract. You will make sure the title shows our security interest (lien) in the vehicle. You will not allow any other security interest to be placed on the title without our written permission.
- d. Insurance you must have on the vehicle. You agree to have physical damage insurance covering loss of or damage to the vehicle for the term of this contract. The insurance must cover our interest in the vehicle. If you do not have this insurance, we may, if we choose, buy physical damage insurance. If we decide to buy physical damage insurance, we may either buy insurance that covers your interest and our interest in the vehicle, or buy insurance that covers only our interest. If we buy either type of insurance, we will tell you which type and the charge you must pay. The charge will be the premium of the insurance and a finance charge computed at the Annual Percentage Rate shown on the front of this contract. If the vehicle is lost or damaged, you agree that we may use any insurance settlement to reduce what you owe or repair the vehicle.
- e. What happens to returned insurance, maintenance, service, or other contract charges. If we get a refund of insurance, maintenance, service, or other contract charges, you agree that we may subtract the refund from what you owe.

## 3. IF YOU PAY LATE OR BREAK YOUR OTHER PROMISES

- a. You may owe late charges. You will pay a late charge on each late payment as shown on the front. Acceptance of a late payment does not excuse your late payment or mean that you may keep making late payments.

If you pay late, we may also take the steps described below.

- b. You may have to pay all you owe at once. If you break your promises (default), we may demand that you pay all you owe on this contract at once. Default means:
  - You do not pay any payment on time;
  - You give false, incomplete, or misleading information on a credit application;
  - You start a proceeding in bankruptcy or one is started against you or your property; or
  - You break any agreements in this contract.
 The amount you will owe will be the unpaid part of the Amount Financed plus the earned and unpaid part of the Finance Charge, any late charges, and any amounts due because you defaulted.
- c. You may have to pay collection costs. If we hire an attorney who is not our salaried employee to collect what you owe, you will pay the attorney's fee and court costs the law permits. The maximum attorney's fee you will pay will be 15% of the amount you owe, unless a court awards an additional amount.
- d. We may take the vehicle from you. If you default, we may take (repossess) the vehicle from you if we do so peacefully and if the law allows it. If your vehicle has an electronic tracking device, you agree that we may use the device to find the vehicle. If we take the vehicle, any accessories, equipment, and replacement parts will stay with the vehicle. If any personal items are in the vehicle, we may store them for you at your expense. If you do not ask for these items back, we may dispose of them as the law allows.
- e. How you can get the vehicle back if we take it. If we repossess the vehicle, you may pay to get it back (redeem). We will tell you how much to pay to redeem. Your right to redeem ends when we sell the vehicle.
- f. We will sell the vehicle if you do not get it back. If you do not redeem, we will sell the vehicle. We will send you a written notice of sale before selling the vehicle. We will apply the money from the sale, less allowed expenses, to the amount you owe. Allowed expenses are expenses we pay as a direct result of taking the vehicle, holding it, preparing it for sale, and selling it. Attorney fees and court costs, if the law permits, are also allowed expenses. If any money is left (surplus), we will pay it to you unless the law requires us to pay it to someone else. If money from the sale is not enough to pay the amount you owe, you must pay the rest to us, unless the law provides otherwise. If you do not pay this amount when we ask, we may charge you interest at a rate not exceeding the highest lawful rate until you pay.
- g. What we may do about optional insurance, maintenance, service, or other contracts. This contract may contain charges for optional insurance, maintenance, service, or other contracts. If we demand that you pay all you owe at once or we repossess the vehicle, we may claim benefits under these contracts and cancel them to obtain refunds of unearned charges to reduce what you owe or repair the vehicle. If the vehicle is a total loss because it is confiscated, damaged, or stolen, we may claim benefits under those contracts and cancel them to obtain refunds of unearned charges to reduce what you owe.

## 4. WARRANTIES SELLER DISCLAIMS

Unless the Seller makes a written warranty, or enters into a service contract within 90 days from the date of this contract, the Seller makes no warranties, express or implied, on the vehicle, and there will be no implied warranties of merchantability or of fitness for a particular purpose. This provision does not affect any warranties covering the vehicle that the vehicle manufacturer may provide.

## 5. Used Car Buyers Guide. The information you see on the window form for this vehicle is part of this contract.

Information on the window form overrides any contrary provisions in the contract of sale. Spanish Translation: Guía para compradores de vehículos usados. La información que ve en el formulario de la ventanilla para este vehículo forma parte del presente contrato. La información del formulario de la ventanilla deja sin efecto toda disposición en contrario contenida en el contrato de venta.

## 6. SERVICING AND COLLECTION CONTACTS

You agree that we may try to contact you in writing, by e-mail, or using prerecorded/artificial voice messages, text messages, and automatic telephone dialing systems, as the law allows. You also agree that we may try to contact you in these and other ways at any address or telephone number you provide us, even if the telephone number is a cell phone number or the contact results in a charge to you.

## 7. APPLICABLE LAW

Federal law and the law of the state of our address shown on the front of this contract apply to this contract.

NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

The preceding NOTICE applies only to goods or services obtained primarily for personal, family, or household use. In all other cases, Buyer will not assert against any subsequent holder or assignee of this contract any claims or defenses the Buyer (debtor) may have against the Seller, or against the manufacturer of the vehicle or equipment obtained under this contract.

EXHIBIT "A"

PAGE 1 OF 2 PAGES

OKLAHOMA TAX COMMISSION

LIEN HOLDERS RELEASE FORMS

VIN: 1N4AL3AP0FN303404

VEHVR: 2015

MAKE: NISS

MODEL: A2S

BODY:

AGNT #: [REDACTED]

LIEN DATE: 12/31/2016

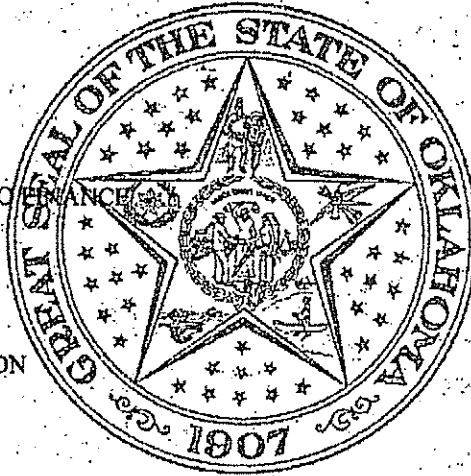
LIEN DEBTOR: MADDEN EMILY

MADDEN EMILY  
1723 ANTHONY AVE  
PURCELL OK 73080-1768

LIEN HOLDER: CAPITAL ONE AUTO FINANCE

CAPITAL ONE AUTO FINANCE  
PO BOX 660068  
SACRAMENTO CA 95866-0068

TO: OKLAHOMA TAX COMMISSION  
MOTOR VEHICLE DIVISION  
P.O. BOX 269061  
OKLAHOMA CITY OK 73126



REF#: [REDACTED]

TO WHOM IT MAY CONCERN: WE HAVE RELEASED OUR SECURITY INTEREST IN THE MOTOR VEHICLE DESCRIBED ABOVE, EFFECTIVE ON THE DATE WHICH APPEARS BY MY SIGNATURE. PLEASE REVISE YOUR RECORDS TO REFLECT THIS RELEASE.

SIGNATURE OF REPRESENTATIVE OF SECURED PARTY

X \_\_\_\_\_

DATE \_\_\_\_\_

**LENDER: TO ENSURE PROPER PROCESSING OF YOUR COMPLETED LIEN RELEASE, PLEASE NOTE THE FOLLOWING.**

DO NOT ALTER THIS DOCUMENT

NO STAPLES

NO TAPE

NO FOREIGN FIXTURES OR ATTACHMENTS

NO WRITING OR MARKING  
(OTHER THAN SIGNATURE AND DATE FOR RELEASE)

DO NOT ALTER THE SIZE OF THIS DOCUMENT

EXHIBIT "A" \_\_\_\_\_

3 - 3



Label Matrix for local noticing  
1087-5  
Case 19-15176  
Western District of Oklahoma  
Oklahoma City  
Mon Mar 2 13:20:57 CST 2020

Synchrony Bank  
c/o PRA Receivables Management, LLC  
PO Box 41021  
Norfolk, VA 23541-1021

Bank of America  
P. O. Box 851001  
Dallas TX 75285-1001

Berman & Rabin P.A.  
P. O. Box 24327  
Overland Park KS 66283-4327

Capital One Spark Business  
Payment Processing  
P. O. Box 71083  
Charlotte NC 28272-1083

Commerce Bank  
P. O. Box 410857  
Kansas City MO 64141-0857

East Point  
c/o Amy Hall  
1738 Elmwood Ave.  
Suite 104  
Buffalo NY 14207-2465

Global Credit & Collection Corp.  
4839 N. Elston Ave.  
Chicago IL 60630-2534

Midland Credit Management LLC  
P. O. Box 301030  
Los Angeles CA 90030-1030

PRA Receivables Management, LLC  
PO Box 41021  
Norfolk, VA 23541-1021

Atlas Acquisitions LLC  
294 Union St.  
Hackensack, NJ 07601-4303

USBC Western District of Oklahoma  
215 Dean A. McGee  
Oklahoma City, OK 73102-3426

Barclays Bank of Delaware  
P. O. Box 130  
Clifton Heights PA 19018-0130

Capital One  
Attn: Payment Processing  
P. O. Box 71083  
Charlotte NC 28272-1083

Cavalry SPV 1, LLC  
500 Summit Lake Drive  
Suite 400  
Valhalla NY 10595-2321

Discover  
P. O. Box 3025  
New Albany OH 43054-3025

(p)US BANK  
PO BOX 5229  
CINCINNATI OH 45201-5229

Kyle Roberts  
3405 Carriage Way  
Edmond OK 73013-8048

Nationwide Credit, Inc.  
P. O. Box 15481  
Des Moines IA 50306

(p)PORTFOLIO RECOVERY ASSOCIATES LLC  
PO BOX 41067  
NORFOLK VA 23541-1067

BMW Bank of North America, c/o AIS Portfolio  
4515 N Santa Fe Ave. Dept. APS  
Oklahoma City, OK 73118-7901

(p)BMW FINANCIAL SERVICES  
CUSTOMER SERVICE CENTER  
PO BOX 3608  
DUBLIN OH 43016-0306

Berman & Rabin P.A.  
15280 Metcalf Ave.  
Overland Park KS 66223-2811

Capital One Spark Business  
Attn: General Correspondence  
P. O. Box 30285  
Salt Lake City UT 84130-0285

Cawley & Bergmann, LLC  
550 Broad Street, Suite 1001  
Newark NJ 07102-4542

ERC  
P. O. Box 57610  
Jacksonville FL 32241-7610

Farmers Federal Credit Union  
P. O. Box 36911  
Los Angeles CA 90036-0911

Midland Credit Management LLC  
3510 Camino De La Reina  
San Diego CA 92108

Navient Solutions  
Navient Federal Loan Trust  
P. O. Box 9500  
Wilkes Barre PA 18773-9500

Radius Global Solutions  
P. O. Box 390900  
Minneapolis MN 55439-0990

Roman Pocztar  
National Enterprise Systems  
2479 Edison Blvd., Unit A  
Twinsburg OH 44087-2476

Sam's  
c/o Synchrony Bank  
P. O. Box 965004  
Orlando FL 32896-5004

State Farm Bank  
P. O. Box 2328  
Bloomington IL 61702-2328

UHG I LLC  
6400 Sheridan Dr.  
Suite 138  
Buffalo NY 14221-4842

United States Trustee  
United States Trustee  
215 Dean A. McGee Ave., 4th Floor  
Oklahoma City, OK 73102-3479

Wells Fargo Bank N.A.  
MAC F8235-040  
P. O. Box 5129  
Sioux Falls SD 57117-5129

Wells Fargo Home Loan  
P. O. Box 14547  
Des Moines IA 50306-3547

Courtney Roberts  
3405 Carriage Way  
Edmond, OK 73013-8048

Ginger D. Goddard  
224 West Gray Street, Suite 202  
Norman, OK 73069-7114

Tami J Hines  
Hall Estill  
100 N Broadway Suite 2900  
Oklahoma City, OK 73102-8865

The preferred mailing address (p) above has been substituted for the following entity/entities as so specified by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g)(4).

BMW Financial  
P. O. Box 3608  
Dublin OH 43016

Elan Financial Services  
P. O. Box 6353  
Fargo ND 58125

Portfolio Recovery Associates LLC  
P. O. Box 12914  
Norfolk VA 23541

(d)U.S. Bank, N.A.  
P. O. Box 3427  
Oskosh, WI 54903

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(d)Atlas Acquisitions LLC  
294 Union St.  
Hackensack, NJ 07601-4303

(d)Farmers Federal Credit Union  
P. O. Box 36911  
Los Angeles CA 90036-0911

End of Label Matrix  
Mailable recipients 39  
Bypassed recipients 2  
Total 41